

the requester, the Office will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Office will consider all commercial interests of the requester, or any person on whose behalf the requester may be acting, which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests; and

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.* A fee waiver or reduction is warranted only where the public interest can fairly be regarded as greater in magnitude than the requester's commercial interest in disclosure. The Office will ordinarily presume that, where a news media requester has satisfied the public interest standard, the public interest will be served primarily by disclosure to that requester. Disclosure to data brokers and others who compile and market Government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records, and should include:

(i) A clear statement of the requester's interest in the documents;

(ii) The proposed use of the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of

the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 2604.304.

§ 2604.504 Miscellaneous fee provisions.

(a) *Notice of anticipated fees in excess of \$25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed \$25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph will include the opportunity to confer with Office personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggregating requests.* A requester may not file multiple requests, each seeking portions of a document or documents in order to avoid the payment of fees. Where there is reason to believe that a requester or group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate the requests and charge accordingly. The Office will presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Multiple requests regarding unrelated matters will not be aggregated.

(c) *Advance payments.* An advance payment before work is commenced or continued will not be required unless:

(1) The Office estimates or determines that the total fee to be assessed under this section is likely to exceed \$250.00. When a determination is made that the allowable charges are likely to

exceed \$250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). In such cases the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (e) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(3) When the Office requests an advance payment of fees, the administrative time limits described in subsection (a)(6) of the FOIA will begin to run only after the Office has received the advance payment.

(d) *Billing and payment.* Normally the Office will require a requester to pay all fees before furnishing the requested records. However, the Office may send a bill along with, or following the furnishing of records, in cases where the requester has a history of prompt payment.

(e) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982, as amended (96 Stat. 1749 *et seq.*) including the use of consumer reporting agencies, collection agencies, and offset.

Subpart F—Annual Report to Congress

§ 2604.601 Submission of report.

On or before March 1 of each calendar year, a report of OGE's activities over the preceding year relating to the Freedom of Information Act will be submitted to the Speaker of the House of Representatives and the President of the Senate.

§ 2604.602 Contents of the report.

The annual report to Congress will include for the relevant reporting period:

(a) The number of FOIA requests made to OGE, determinations made by OGE not to comply with requests for records made to it under the FOIA and the reasons for each such determination;

(b) The number of appeals made by persons under the FOIA, the results of such appeals, and the reasons for the action by OGE upon each appeal that results in a denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under the FOIA;

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(F) of the FOIA, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of every rule made by OGE regarding the FOIA;

(f) A copy of the fee schedule and the total amount of fees collected by OGE for making records available under the FOIA; and

(g) Such other information as indicates efforts by OGE to administer fully the FOIA.

Subpart G—Fees for the Reproduction and Mailing of Public Financial Disclosure Reports

§ 2604.701 Policy.

Fees for the reproduction and mailing of public financial disclosure reports (SF 278s) requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended, and § 2634.603 of this chapter shall be assessed according to the schedule contained in § 2604.702. Requesters shall pay fees by check or money order made payable to the Treasury of the United States. Except as provided in § 2604.702(d), nothing concerning fees in subpart E of this part supersedes the charges set forth in this subpart for records covered in this subpart.